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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CASEY TAYLOR, et al.,

11 Plaintiff,

12 v.

13 BURLINGTON NORTHERN
14 RAILROAD HOLDINGS, INC., et al.,

15 Defendants.

CASE NO. C11-1289JLR

ORDER

16 This matter comes before the court on Defendant BNSF Railway Company's
17 ("BNSF")¹ motion for summary judgment. (Mot. (Dkt. # 29).) The court previously
18 granted the motion in part and deferred ruling in part. (*See* 2/17/16 Order (Dkt. # 53).)

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20 ¹ Plaintiffs originally named both BNSF Railway Company and Burlington Northern
21 Railroad Holdings, Inc., as defendants in this matter; however, in their agreed pretrial order the
22 parties informed the court that "the caption of this case should be amended to reflect that the
plaintiffs' claims are against defendant BNSF Railway Company only." (Prop. PTO (Dkt. # 59)
at 2.) Accordingly, the court DISMISSES all claims against Burlington Northern Railroad
Holdings, Inc., with prejudice.

1 Specifically, the court granted summary judgment in BNSF's favor on Plaintiffs Casey
2 and Angelina Taylor's ("the Taylors") claims that BNSF discriminated against Mr.
3 Taylor on the basis of (1) BNSF's perception that Mr. Taylor was disabled due to obesity
4 and (2) Mr. Taylor's status as an honorably discharged veteran. (*See id.* at 11-23.) The
5 court reserved ruling on the Taylors' final claim—that BNSF discriminated against Mr.
6 Taylor on the basis of a perception that Mr. Taylor was disabled due to problems with his
7 knees and back.² (*See id.* at 20-21, 23.) At the pretrial conference, the court heard oral
8 argument on that issue. (*See Dkt. # 62.*) Now, having considered all briefing and
9 materials filed in support of and opposition to BNSF's motion, the balance of the record,
10 the relevant law, and oral argument, the court GRANTS BNSF's motion for summary
11 judgment on the Taylors' knee- and back-related disability discrimination claim and
12 DISMISSES this case with prejudice.

13 The question before the court is whether the Taylors have met their summary
14 judgment burden to point to evidence from which a jury could conclude that BNSF
15 perceived Mr. Taylor as disabled due to problems with his knees and back. (*See id.*;
16 2/17/16 Order at 20-21.) The court concludes that the evidence presented, viewed in the
17 light most favorable to the Taylors, does not support the conclusion that BNSF perceived
18 Mr. Taylor as disabled due to knee and back problems. The evidence shows that BNSF
19 knew about Mr. Taylor's past knee and back problems and was uncertain of the current

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21 2 The Taylors bring all their claims under the Washington Law Against Discrimination
22 ("WLAD"), RCW ch. 49.60. (*See Prop. PTO at 1; 2/17/16 Order at 7; Taylor MILs (Dkt. # 38*
at 1-2.)

1 status of his knees and back. (*See* 2/17/16 Order at 4, 20; Dkt. # 62.) However, the
2 evidence fails to show that BNSF perceived Mr. Taylor as having presently existing knee
3 and back problems. Indeed, BNSF knew only that Mr. Taylor reported having no current
4 problems with his knees and back and passed the physical tests during his medical
5 examination. (*See* 2/17/16 Order at 4, 20; Dkt. # 62.) Moreover, at the pretrial
6 conference, the Taylors' counsel implicitly acknowledged that BNSF did not perceive
7 any presently existing problems when he stated that Dr. Jarrard, BNSF's medical officer,
8 knew that Mr. Taylor had no problems with his knees and back except what was in his
9 medical history. (*See* Dkt. # 62.)

10 The WLAD defines disability as "the presence of a . . . physical impairment that:

11 (i) Is medically cognizable or diagnosable; or (ii) Exists as a record or history; or (iii) Is
12 perceived to exist whether or not it exists in fact." RCW 49.60.040(7)(a). As their
13 counsel confirmed at the pretrial conference, the Taylors bring only a perceived disability
14 claim, not an actual or a "record or history of" disability claim. (*See* Dkt. # 62); RCW
15 49.60.040(7)(a)(iii). Therefore, it is insufficient for the Taylors to show that BNSF knew
16 about Mr. Taylor's past knee and back problems and discriminated against him on the
17 basis of that history. Instead, the Taylors must provide evidence from which a jury could
18 conclude that BNSF perceived Mr. Taylor as being presently disabled due to his knees

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1 and back. Because the Taylors have failed to meet this burden, the court GRANTS
2 summary judgment in BNSF's favor on the Taylors' knee- and back-related disability
3 discrimination claims and DISMISSES this case with prejudice.

4 Dated this 7th day of March, 2016.

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8 JAMES L. ROBART
United States District Judge

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